IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

CRL.A.No. 1806 of 2006()

SC.13/2005 of ADDL.SESSIONS COURT FAST TRACK III, THIRUVANANTHAPURAM
CP.35/2004 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTAHAPURAM

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APPELLANT/ACCUSED:

SAHAYADAS, C.NO.9810,
CENTRAL PRISON, TRIVANDRUM.

BY ADV. SRI.K.K.RAJEEV (S.B)

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY
A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1806 OF 2006

Dated this the 1st day of January, 2007

JUDGMENT

The appellant is the accused in Sessions Case No.13 of 2005 on the file of the Additional Sessions Court Fast Track III, Thiruvananthapuram. He faced trial for the offences punishable under Sections 363 and 511 of Section 376 I.P.C.

2. The prosecution case against the appellant was that on 13.2.2004 at about 7 p.m., he took PW.1, his step daughter, from the convent where she was staying to a lodge on the pretext of taking her to the Medical College Hospital, Thiruvananthapuram where she was told her mother was admitted. It is the further case of the prosecution that PW.1 was taken to room No.75 and during the night and at about 4 a.m. on 14.2.2004, the appellant tried to commit rape on PW.1. On the above allegations, the police filed charge against the appellant. To prove the case against the appellant, the prosecution examined PWs.1 to 12 and produced Exts.P1 to P11. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The appellant denied

the allegations levelled against him. According to the appellant, he was going with PW.1 to the Medical College Hospital and since the out patient section had closed when they reached the hospital, he had taken PW.1 to a room in a lodge from where he was taken by the police. However, relying on the evidence adduced by the prosecution, the trial court found the appellant guilty under Sections 363 and 354 I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5000/- and in default of payment of fine to undergo imprisonment for a further period of one year for the offence under Section 363 I.P.C. He was further sentenced to undergo rigorous imprisonment for a period of two years under Section 354 I.P.C. The sentences were ordered to run concurrently. The trial court also ordered to pay half of the fine amount, if realised, to PW.1 as compensation. The trial court further found that the prosecution failed to prove the charge against the appellant under Section 511 of Section 376 I.P.C. and the appellant was acquitted of that charge. The above conviction and sentences are challenged in this appeal.

3. This appeal is filed through the jail authorities and the appellant is defended by a State Brief. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. The learned counsel appearing for the appellant raised two points: (i) the finding of the trial court that the appellant was guilty under Section 363 I.P.C. is not sustainable as there was no evidence to show that the appellant had abducted PW.1 from the lawful custody of ECI Child Happy Home Convent and that being the step father of PW.1, he is the guardian of PW.1 and (ii) the prosecution failed to prove that PW.1, the victim, was a minor during the relevant time.

5. The prosecution relied on the evidence of PWs.1 to 4 to prove that the appellant had taken PW.1 from the custody of PWs.3 and 4 on the basis of the concocted story that her mother was admitted in the Medical College Hospital and wanted to see PW.1. PW.1, the victim, deposed before the court below that she and her mother, PW.2, were residing with the appellant for more than five years and that thereafter she has been staying in the convent and studying at the Government Middle School during the relevant time. She further stated that on the day of the incident, the appellant came to the convent at about 7 p.m. and told her that her mother was admitted in the Medical College Hospital, Thiruvananthapuram and wanted to see her and that on seeing the food and flask which the appellant had with him, she believed him and went with

him with the permission of PWs.3 and 4, the pastor and warden respectively of the convent. PW.1 further stated that they reached Thiruvananthapuram at 10 p.m. and that the appellant took her to a room in a lodge saying that they will not be permitted to enter the hospital at that time. This witness further deposed that there were two cots in the room and that she laid down on one of the cots and after sometime the appellant came and laid down beside her. According to PW.1 she got up and went to the other cot and the appellant also followed her, laid down beside her and pulled her close to him whereupon she got up from the cot and started crying. PW.1 also stated that she left the room in the morning, got the phone number of the convent from the appellant and informed the authorities of what had taken place and the authorities had informed her mother and that she gave Ext.P1 First Information Statement to PW.8. She further stated that the appellant had misbehaved even on prior occasions and when she complained to her mother, she was taken to the convent. The evidence of this witness would also show that her mother was married to one Raju and when the said Raju left, her mother started living with the appellant and that the appellant was looking after her affairs till she was sent to the convent.

6. The mother of PW.1 who was examined as PW.2 also stated that

the appellant used to misbehave towards PW.1. She admitted that PW.1 was born to her in her first marriage. PW.3 was the pastor who had arranged the stay of PW.1 at the convent. He also stated that PW.2 had informed him regarding the previous conduct of the appellant towards PW.1. PW.4 was the warden of the convent during the relevant time. He deposed that on 13.2.2004, the appellant had taken PW.1 stating that her mother was admitted in the Medical College Hospital and that on seeing the food and the flask in the hands of the appellant, PW.1 was allowed to go with him. He further stated that a message was received on the next day from Alankar Lodge stating that the mother of PW.1 was not in the hospital and that the appellant had cheated PW.1. Request was also made to take PW.1 to the convent. PW.5, the owner of the lodge was examined to prove that the appellant had taken PW.1 to room No.75 on 13.2.2004. PW.6 was the Headmaster of Kozhivila Government Middle School where PW.1 was studying during the relevant time. He produced Ext.P6 certificate showing the date of birth of PW.1. PWs.8 and 12 were the police officials who recorded Ext.P1 First Information Statement and conducted investigation. PWs. 9 and 10 were the doctors who examined the appellant as well as PW.1. Ext.P7 is the certificate of potency of the appellant. Exts.P8 and P10 are the chemical analysis certificates in respect of the appellant and PW.1 respectively. PW.10 who had examined

PW.1 stated that she noted a small abrasion 1 cm. long near her left thigh which according to her can be caused when a victim tries to escape or resist the attempt of rape. PW.11 was the manager of Alankar Lodge who identified the appellant and PW.1 as the persons who had occupied room No.75. He also stated that the next day, he saw PW.1 coming out of the room weeping.

7. The trial court accepted the evidence of PW.1 supported by the evidence of PWs.2, 3 and 4 and found that the appellant had taken PW1. from the lawful custody of PWs.3 and 4 on the day of the incident. After considering the entire evidence, this Court is of the view that the trial court was fully justified in accepting the evidence adduced by the prosecution to find the appellant guilty under Section 363 I.P.C.

8. The next question to be considered is whether the appellant committed offence punishable under Section 511 of 376 I.P.C. or Section 354 I.P.C. Though the prosecution alleged that the appellant attempted to commit rape on PW.1, the evidence of PW.1 would show that the action of the appellant amounts to an offence punishable under Section 354 I.P.C. To come to this conclusion, the trial court relied on the evidence of PW.10 and Exts.P8 and P9. PW.10 had clearly stated that the abrasion noted

near the left thigh of PW.1 might have been caused while PW.1 resisted the attempt of rape. This Court is of the view that the trial court rightly came to the conclusion that there was no evidence to prove that the appellant committed offence punishable under Section 511 of Section 376 I.P.C.

9. With regard to the contention that the prosecution failed to prove that PW.1 was a minor during the relevant time, the trial court considered the evidence of PWs.6 and 10. While analysing the evidence of these witnesses, the trial court found that PW.1 was a minor at the time of the incident and she was under the lawful custody of PWs.3 and 4.

10. On an overall appreciation of the entire evidence, this Court is of the view that the trial court was fully justified in finding the appellant guilty under Sections 363 and 354 I.P.C. and the above finding does not require any interference. With regard to the sentence awarded, this Court is of the view that the appellant was aged 47 at the time of the incident and being the step father of PW.1, the appellant ought not to have committed such an offence. Hence, the sentences awarded by the trial court also requires no interference by this Court.

The Crl. Appeal is accordingly dismissed, confirming the conviction and sentences ordered by the trial court.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.1806/2006

JUDGMENT

1ST JANURAY, 2007